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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

SCHULTE PROPERTIES LLC,

Debtor.

Bankruptcy Case No. 18-12734-mkn

Chapter 11

**MOTION FOR RELIEF FROM ORDER
GRANTING DEBTOR'S EX PARTE MOTION
FOR ORDER REQUIRING THE PERSON MOST
KNOWLEDGEABLE OF FIDELITY BANK TO
APPEAR FOR EXAMINATION PURSUANT TO
FED. R. BANKR. P. 2004 REGARDING
PROPERTY LOCATED AT 5524 ROCK CREEK**

HEARING DATE:

DATE: May 15, 2019

TIME: 9:30 AM

CTRM: 2

PLACE: 300 Las Vegas Blvd. South
Las Vegas, NV 89101

**TO THE HONORABLE MIKE K. NAKAGAWA, UNITED STATES BANKRUPTCY COURT
JUDGE, THE DEBTOR, THE DEBTOR'S COUNSEL, THE OFFICE OF THE UNITED
STATES TRUSTEE, AND OTHER INTERESTED PARTIES:**

Fidelity Bank ("Fidelity"), a secured creditor in this case, hereby moves for relief from the Order Granting Debtor's Ex Parte Motion for Order Requiring the Person Most Knowledgeable of Fidelity Bank to Appear for Examination Pursuant to Fed. R. Bankr. P. 2004 Regarding Property

1 Located at 5524 Rock Creek (“Order”). Fidelity’s Motion is based upon the following memorandum of
2 points and authorities, any supplemental pleadings that the Court may require, and any oral argument
3 that may be presented at a hearing on the Motion.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I.**

6 **INTRODUCTION**

7 On March 25, 2019, Schulte Properties LLC (“Debtor”) filed an Ex Parte Motion for Order
8 Requiring the Person Most Knowledgeable of Fidelity Bank to Appear for Examination Pursuant to Fed.
9 R. Bankr. P. 2004 Regarding Property Located at 5524 Rock Creek (“2004 Motion”). Fidelity now
10 moves for relief from the Order because Fidelity was not afforded the opportunity to respond to or
11 oppose the 2004 Motion prior to entry of the Order and because the 2004 Motion should be denied for
12 the following reasons:

13 1. The scope of the discovery requested by the 2004 Motion exceeds that which is
14 authorized by Federal Rule of Bankruptcy Procedure 2004 and Debtor is unable to show good cause in
15 requesting the examination and documentation in the 2004 Motion.

16 2. Debtor seeks information from a bankruptcy case filed in 2009 by another debtor,
17 identified as case number 09-29123, which has been fully administered with a substantially
18 consummated plan and confidential information from non-Debtor accounts.

19 Based upon the foregoing, and as explained in further detail below, the Order should be vacated
20 and the 2004 Motion denied. Alternatively, Fidelity requests a protective order limiting the scope of the
21 Order.

22 **II.**

23 **STATEMENT OF FACTS**

24 1. On or about November 17, 1993, Dan Ray Heidemann and Linda Heideman executed a
25 promissory note (“Note”) payable to RSL Mortgage Corp., a Kansas Corporation (“RSL”) in the
26 original, principal amount of \$111,508.00. The Note is secured by a first priority deed of trust (“Deed of
27 Trust”) against the property commonly known as 5524 Rock Creek Lane, Las Vegas, Nevada 89130
28 (“Property”).

1 2. On March 1, 1994, RSL recorded an Assignment of Deed of Trust to Railroad Savings
2 Bank F.S.B., a Federally Chartered Savings Bank (“RSB”) against the Property.

3 3. On September 1, 1994, RSB executed an Assignment of Mortgage to Fidelity against the
4 Property.

5 4. On September 25, 1996, William R Schulte and Melani Schulte (“The Schultes”)
6 executed an Assumption Agreement with Release indicating that Borrowers had sold the Property to The
7 Schultes, wherein The Schultes would assume and agreed to pay the indebtedness and perform all
8 obligations under the loan contract.

9 5. On August 24, 2004, The Schultes recorded a Grant, Bargain, Sale Deed in the Clark
10 County Recorder’s Office as recording number 20040824-0004156 conveying interest in the Property to
11 5524 Rock Creek, LLC (“Rock Creek LLC”).

12 6. On February 8, 2007, Rock Creek LLC recorded a Grant, Bargain, Sale Deed in the Clark
13 County Recorder’s Office as recording number 20070208-0003152 conveying interest in the Property to
14 William and Melani Schulte Trust (“Schulte Trust”).

15 7. On February 28, 2007, Schulte Trust recorded a Grant, Bargain, Sale Deed in the Clark
16 County Recorder’s Office as recording number 20070228-0003496 conveying interest in the Property
17 back to Rock Creek LLC.

18 8. On September 23, 2009, a Notice of Default and Election to Sell under Deed of Trust was
19 recorded against the Property in the Clark County Recorder’s Office as recording number
20 200909230003778.

21 9. On November 1, 2010, Rock Creek LLC recorded a Grant, Bargain, Sale Deed in the
22 Clark County Recorder’s Office as recording number 201011010003491 conveying interest in the
23 Property to The Schultes.

24 10. On August 21, 2013, The Schultes recorded a Grant, Bargain, Sale Deed in the Clark
25 County Recorder’s Office as recording number 201308210002062 conveying interest in the Property to
26 Melani Schulte.

27 11. On April 6, 2018, Melani Schulte recorded a Grant, Bargain, Sale Deed in the Clark
28 County Recorder’s Office as recording number 20180406-0002401 conveying interest in the Property to

Debtor.

12. On May 10, 2018, Debtor filed Chapter 11 bankruptcy case number 18-12734-mkn.

13. On August 28, 2019, Fidelity filed a proof of claim as Claims Register No. 5 (“Claim”). The Claim reflects a secured claim of \$81,010.78 and pre-petition arrears of \$4,109.39. The accompanying Mortgage Proof of Claim Attachment indicates that the arrears are comprised of \$1,202.76 in principal and interest payments and pre-petition fees due in the amount of \$2,930.06. *See* Claims Register No. 5, Mortgage Proof of Claim Attachment.

14. On March 25, 2019, Debtor filed the 2004 Motion. *See* Docket Entry 242.

15. On March 26, 2019, the Order was entered. *See* Docket Entry 275.

III.

DISCUSSION

A. The Legal Standard for a FRBP 60 Motion for Relief.

Under Rule 60(b), a court may relieve a party from a final judgment, order or proceeding only in the following circumstances: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying relief from the judgment. *See* Fed. R. Civ. P. 60(b); *see also De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000) (noting that a district court's denial of Rule 59 and Rule 60(b) motions is reviewed for an abuse of discretion).

Since the Order was entered on an ex parte basis, Fidelity did not have the opportunity to respond and/or oppose the 2004 Motion and now moves for relief from the Order.

B. The 2004 Motion is Beyond the Scope of Discovery Warranted by Bankruptcy Code Section 2004.

FRBP 2004(a) provides that any party in interest may file a motion for examination and a court may subsequently order the examination of any entity provided in such motion. “The examination of an entity . . . may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate, or to the debtor’s right to a discharge.” FRBP 2004(b). Specifically under chapter 11, the examination can also relate to operation of any business and its continuance, the source of any money or property acquired by the

debtor in order to consummate a plan, and any other matter relevant to the instant case or the formulation of the plan itself. FRBP 2004(b).

a. The Debtor Is Not In Privity Of Contract With Fidelity With Respect To The Loan Secured Against The Property, Which Would Prevent Disclosure Of Confidential Information To The Debtor.

The discovery requested in the 2004 Motion is beyond the scope of a FRBP 2004 examination because there is no privity of contract between Debtor and Fidelity. Therefore, Fidelity is unable to discuss confidential loan information with the Debtor. For this reason, Fidelity objects to the disclosure of the information identified in the 2004 Motion absent a protective order.

b. Debtor's Attempt To Obtain Discovery From The 2009 Bankruptcy Case In The Instant Bankruptcy Case Is Not Warranted As The 2009 Bankruptcy Case Has Been Fully Administered With A Substantially Consummated Plan.

Debtor is not entitled under FRBP 2004 to seek information related to the Schultes' 2009 Bankruptcy Case as this case has been fully administered with a substantially consummated plan and discharge entered. Additionally, the 2009 Bankruptcy Case involved different debtors. The acts, conduct, liabilities, property or financial condition of the 2009 Bankruptcy Case are not relevant to the instant bankruptcy case. Because of these reasons, the 2004 Order should be vacated.

C. If the Court Finds that the Order Should be Upheld, Fidelity Respectfully Requests that the Court to Issue a Protective Order Limiting the Scope of the Order.

Fidelity objects to requests for oral examination and production requests with respect to confidential and personal financial information related to the loan account as protected, private information in which Debtor has no privity of contract with Fidelity.

Fidelity objects to requests for oral examination and production requests relating to the 2009 Bankruptcy Case as the Debtor was not a party to that case nor is it relevant to the instant bankruptcy case.

Fidelity objects to requests relating to its "general policies and procedures" for Fidelity's compliance with bankruptcy court orders as this is an attempt to obtain confidential information from Fidelity's business records, which Fidelity would not otherwise disclose.

1 Fidelity objects to production of recorded documents as this information is readily available to
2 Debtor through the Clark County Recorder's Office or that which Debtor already has access to via its
3 own records.

4 **IV.**

5 **CONCLUSION**

6 Based upon the foregoing, Fidelity respectfully requests that the Court grant the Motion and
7 enter an order vacating the Order, or in the alternative, enter a protective order limiting the scope of the
8 2004 Motion/Examination.

9 DATED: April 17, 2019

Respectfully Submitted,

10 MALCOLM ♦ CISNEROS, A Law Corporation

11 By: /s/ Nathan F. Smith

12 NATHAN F. SMITH

13 *Attorneys for Fidelity Bank*
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UNITED STATES TRUSTEE:

U.S. Trustee - LV - 11

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17, 2019, at Irvine, California

By: /s/ Kelli Brown

Kelli Brown